

Housing

What does Fair Housing mean to a person with a disability?

- Fair housing laws do the following:
- Prohibits discrimination against persons with disabilities.
- Requires housing providers to make reasonable accommodations for persons with disabilities.
- Requires housing providers to allow persons with disabilities to make reasonable modifications.
- Requires that new covered multifamily housing be designed and constructed to be accessible.

What laws affect housing?

- **The Americans with Disabilities Act:** In most cases, the ADA does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as offices buildings, warehouses, and factories. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public. For example, it covers the rental office since the rental office is open to the general public.
- Title II of the ADA applies to all programs, services, and activities provided or made available by public entities.
This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA definition of "public entity," and housing operated by States or units of local government, such as housing on a State university campus.



For the text of the ADA see <http://www.usdoj.gov/crt/ada/adahom1.htm>

Federal Fair Housing Act

- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents of legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability).
- For text of the FHA see <http://www.usdoj.gov/crt/housing/title8.htm>
- For examples of the FHA protections see <http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm>

What Types of Housing is Covered by the Fair Housing Act

- The Fair Housing Act applies to “housing providers”
- Broad definition of housing provider:
Apartments (landlords), Housing Authorities, Management Companies, Assisted-Living Facilities, Group Homes, Homeowners’ Associations

Group homes are also protected

- The Fair Housing Act makes it unlawful --
 - To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
 - To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
 - To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- See http://www.usdoj.gov/crt/housing/final8_1.htm
 - <http://www.pai-ca.org/pubs/521901.pdf>



Homeowners Associations Also Covered by Fair Housing Act

- Caselaw: Homeowner's associations have been found to be considered housing providers and, therefore, subject to the requirements of the the Fair Housing Act. *See Marthon v. Maple Grove Condominium Association*, 101 F. Supp. 2d 1041 (N.D. Ill. 2000); *Jacobs v. Concorde Village Condominium X Association*, 2004 WL 741384 (S.D. Fla).

Federal - Architectural Barriers Act of 1968

- The Architectural Barriers Act requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by handicapped persons.
- For text of the ABA see <http://www.access-board.gov/about/ABA.htm>



California State Law - Fair Employment and Housing Act

- The Fair Employment and Housing Act specifics:
- Prohibits discrimination and harassment in all aspects of housing including sales and rentals, evictions, terms and conditions, mortgage loans and insurance, and land use and zoning.
- Requires housing providers to make reasonable accommodation in rules and practices to permit persons with disabilities to use and enjoy a dwelling and to allow persons with disabilities to make reasonable modifications of the premises.
- Prohibits retaliation against any person who has filed a complaint with the Department, participated in a Department investigation or opposed any activity prohibited by the Act.

Remedies under FEHA

- The law provides for a variety of remedies, which may include:
- Housing Previously Denied, Out-Of-Pocket Expenses, Cease and Desist Orders, Damages for Emotional Distress, Reasonable Attorneys Fees and Costs, Expert Witness Fees, Civil Penalties, and Court Ordered Punitive Damages
- Persons who believe they have experienced housing discrimination may file a DFEH complaint. Complaints must be filed within **one year** from the date of the alleged discriminatory act.

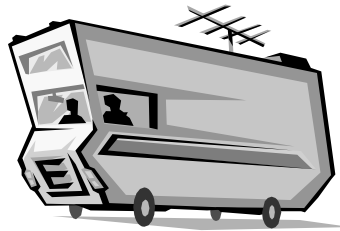
Persons wishing to file a lawsuit directly in court do **not** need a "right-to-sue" from DFEH.

Civil lawsuits must be filed within **two years** of the alleged discrimination.

- For text of the FEHA see <http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>

Mobile Homes and RV Parks
are completely different when it
comes to housing law – be sure
to look it up!

- <http://www.hcd.ca.gov/codes/ol/ombpg-menu.html>



REASONABLE ACCOMMODATIONS

- Title II of the ADA, § 504, and the Fair Housing Act all require that reasonable accommodations be made to rules, policies, practices or services, where necessary to allow a person with a disability the opportunity to use and enjoy a dwelling.
- Example: Larger apartment for live-in aid

Reasonable accommodations: Physical/Structural Modifications

- Under the FHA structural changes are covered by the "reasonable modifications" provision, not the reasonable accommodation provision. See 42 U.S.C. § 3604(f)(3)(A). Determining what is reasonable requires an individualized analysis and will vary from case to case, although the statutes are clear that anything that imposes an undue financial or administrative burden or constitutes a fundamental alteration is not required.

Physical/Structural Modifications contd.

- Examples of modifications that would likely be found reasonable are the addition of a small ramp needed to enter a dwelling unit, installing grab bars, substituting lever door handles or designating a parking space in a first come-first serve parking lot. Adding an elevator to an existing facility or bypassing the waiting list of either a new or altered facility would most likely be found unreasonable. See, e.g., *Liddy v. Cisneros*, 823 F. Supp. 164 (S.D.N.Y. 1993).

Support Animals

- If a person needs an emotional support animal to ease the symptoms of a disability, he or she should request a reasonable accommodation, in writing, from the landlord, manager or other appropriate authority.
- The request should state that the tenant has a disability and explain how the requested accommodation will be helpful. In addition, the tenant should include a note from his or her service provider, such as a doctor or therapist, verifying the need for the support animal.

Exception Rents

- In areas where the housing authority's payment standard is too low (compared to actual market rents) to find accessible housing tenants with disabilities can request "exception rents" as a reasonable accommodation.
- The Housing Authority has discretion to grant exception payment standards up to 110% of the area's Fair Market Rent (this is an amount determined by HUD to be the fair market rent for a particular size unit in the regional area).
- Requests between 110% and 120% of the FMR have to be approved by the local HUD field office.
- Anything above 120%, the request has to be approved by the HUD headquarters in D.C

Exception Rents Contd.

- A request for an exception payment standard as a reasonable accommodation needs to clearly explain why the person needs to live in his or her particular unit and/or cannot move because of disability.
- If you need a particular unit, you must:
 - Prove what features of the unit your disabilities require (e.g., accessibility, security, close to family or other supports).
 - Once there is a list of the unit's features that your disabilities require, it would be extremely helpful to be able to show that there are no units with those features at or below the payment standard.
 - This can be done by calling listings from any of the following non-exhaustive list of housing resources and keep track of why each unit listed would not work:

Note: If you cannot move because of your disability, you must provide proof with medical documentation.

Reasonable Accommodations in the Context of Eviction

- Even when a tenant without a disability would legitimately be subject to eviction, a landlord cannot necessarily evict a tenant with a disability solely because of behavior related to the tenant's disability.
- If it is possible for a landlord to alter its policies and rules so that a tenant with a disability can remain in a unit, and is not unduly burdensome, the landlord must make the accommodation and preserve the tenancy.

Example: Reasonable Accommodation to Prevent Eviction

- Accommodations might take the form of a tenant agreeing to modify his or her own behavior, or might involve a landlord altering its policy or rules, and possibly even absorbing some cost. See, e.g., *Shapiro v. Cadman Towers*, 51 F.3d 328 (2d Cir. 1995), and *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413 (9th Cir. 1993) ("California Mobile Home Park I") (overruled by *United States v. California Mobile Home Park Management Co.*, 107 F.3d 1374 (9th Cir. 1997).
- For example, a tenant who with a mental illness whose behavior is disturbing other residents might request that the landlord cease eviction proceedings until the tenant has had an opportunity to secure services that will help him to interact with other people in a way that will not be threatening or frightening to them.

Defenses to the reasonable accommodation requirement

- If the cost imposed upon a landlord in granting an accommodation is so great as to constitute an undue burden.
- If the accommodation will cause a fundamental alteration in the provision of housing.

Direct Threat Exception

- The Fair Housing Act excludes from coverage individuals with disabilities "whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 U.S.C. § 3604(f)(9). In light of this exclusion, landlords may refuse to grant tenants reasonable accommodations in certain very limited situations.

Section 8

- To apply for housing voucher (Section 8) contact your local housing authority. Once you apply, you will be placed on the waitlist at the housing authority
- Some programs have vouchers set aside for people with disabilities, so if a family member has a disability, you may want to indicate that on the application.
- Possible areas for organizing/advocacy around issuing of vouchers: Some housing authorities, including Butte County have unused funds that could go to the issuance of vouchers. Advocates may want to work with PAI to push housing authorities to make use of these funds.

Section 8: Extension of Voucher Search Time as a Reasonable Accommodation

HUD Regulations:

- § 982.303(b)(2): If the family needs and requests an extension of the initial voucher term as a reasonable accommodation, in accordance with part 8 of this title, to make the program accessible to a family members who is a person with disabilities, the PHA must extend the voucher term up to the term reasonably required for that person.
- HUD also requires that housing authorities provide search assistance to voucher holders whose disabilities (or whose family members' disabilities) prevent them from locating housing.

What to do if Landlord will not grant accommodation?

- If public housing, contact housing authority to file grievance (some housing authorities have a disability coordinator)
- HUD (federal) complaint
- State DFEH complaint
- Fair housing litigation
- Contact PAI

How do I file a Federal Complaint?

- HUD Fill out a form found at
<http://www5.hud.gov:1025/netdynamics/ndNSAPI.nd/HUD903/pagHUDPrivacy>
- Or a letter with the following
- Your name and address
The name and address of the person your complaint is about
The address of the house or apartment you were trying to rent or buy
The date when this incident occurred
A short description of what happened
Then mail it to the Fair Housing Hub closest to you:
- Dept. of Housing and Urban Development
600 Harrison Street, 3rd Floor
San Francisco, CA 94107-1300
- Phone: (415) 489-6400
Fax: (415) 489-6419



How do I file a State Complaint?

- Housing Complaint Flow Chart can be found at
<http://www.dfeh.ca.gov/complaintHousingflow.asp>
- **Intake**
 - Complainants are first interviewed to collect facts about possible discrimination. Interviews are normally conducted by telephone. Prior to the interview, a Pre-Complaint Questionnaire, (DFEH-700-01) English or (DFEH-700-01s) Spanish, must be filled out and mailed to the Department. You can obtain a copy of this questionnaire by contacting DFEH or by downloading it from the Publications page. Once the completed questionnaire has been received by the Department, you will be contacted to arrange the telephone interview.
- **Filing**
 - If the complaint is accepted for investigation, the interviewing Consultant drafts a formal complaint on the DFEH's standard form. It is signed and served on the Respondent.
 - If jurisdictional under federal law, the complaint is also filed with the United States Department of Housing and Urban Development (HUD). As a substantially equivalent agency, DFEH's findings are usually accepted by HUD.
 - The Respondent is required to answer the complaint and is given the opportunity to voluntarily resolve it. A no-fault resolution can be negotiated at any time during the complaint process.
 - Complaints can be filed by individuals, the Director of DFEH, or a community organization.

What will DFEH do in regards to my complaint?

- **Investigation**
 - DFEH investigates every case in a standard, timely manner.
 - DFEH has the authority to take depositions, issue subpoenas and interrogatories and seek Temporary Restraining Orders when appropriate.
 - If the investigative findings do not show a violation of the law, DFEH will close the case.
- **Conciliation**
 - Formal conciliation conferences are scheduled when the investigative findings show a violation of the law.
 - During the conciliation conference, the Department presents information supporting its belief that there has been a violation and explores options to resolve the complaint.
 - If formal conciliation fails, the Housing Administrator may recommend litigation.
- **Litigation**
 - After issuing an accusation, DFEH legal staff litigates the case. Based on the option of the parties, the case may be heard before the Fair Employment and Housing Commission (FEHC) or in civil court.
- **Remedies**
 - The FEHC may order remedies for out-of-pocket losses, injunctive relief, access to the housing previously denied, additional damages for emotional distress, and civil penalties up to \$10,000 for the first violation. Court remedies are identical with one exception:
 - Instead of civil penalties, a court may award unlimited punitive damages.

What will my decision look like?

- Copies of state decisions can be found at <http://www.dfeh.ca.gov/PrecedentialD/Decisions.asp>

Fair Housing Resources

- HUD Publications on Fair Housing
- <http://www.hud.gov/offices/fheo/FHLaws/FairHousingJan2002.pdf>
- HUD Library Resources on Housing
- <http://www.hud.gov/library/bookshelf04/index.cfm>
- State Fair Housing Fact Sheet
- <http://www.dfeh.ca.gov/Publications/Housing%20Rights%20Fact%20Sheet.pdf>
- "What 'Fair Housing' Means for People with Disabilities."
<http://www.bazelon.org/issues/housing/publications/index.htm>
- California Tenants
<http://www.dca.ca.gov/legal/landlordbook/catenant.pdf>
- Self Advocacy Skills in Housing
<http://www.pai-ca.org/pubs/521501.pdf>

Section 8 Resources

- This is only for Section 8 – not for other subsidized housing.
- The Section 8 Housing Choice Voucher Program administered through the U.S. Department of HUD is one of the most important federal programs for people with disabilities. With Section 8, people with disabilities can become more independent and have the opportunity for full community integration.
- Section 8 Made Simple
http://www.tacinc.org/cms/admin/cms/_uploads/docs/Sect8.2ndEd.pdf
- Publications related to Section 8
<http://www.nhlp.org/html/sec8/index.htm>
- Reasonable Accommodations – People may need help with the bureaucracy of the program.
- <http://www.pai-ca.org/pubs/541801.htm>
- Reasonable Modifications – Allows altering of the property.

Hypothetical Questions

- Tenant with severe mobility impairments needs the assistance of a live-in aid in order to be able to stay in her own apartment. However, her Section 8 voucher only applies to 1 bedroom units. What should she do?
- Tenant has multiple disabilities and severe respiratory illness, requiring that she install an air conditioner in her apartment. Apartment does not have central air and tenant seeks to install window unit – despite apartment complex's strict rules against window unit air-conditioners. What should she do?
- Tenant who uses a wheelchair has assigned parking space in a driveway that is at a slight grade – making it extremely difficult for him to enter and exit his car and access his apartment. What should he do?